

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 L-03 H-02 PA-01 PRS-01 USIA-06 AID-05

CIAE-00 COME-00 EB-07 FRB-03 INR-07 NSAE-00 TRSE-00

XMB-02 OPIC-03 SP-02 CIEP-01 LAB-04 SIL-01 OMB-01

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R 030946Z MAR 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2671

LIMITED OFFICIAL USE SECTION 1 OF 2 MANILA 3073

E.O. 11652: N/A

TAGS: EINV, EGEN, RP, US

SUBJECT: ABAD SANTOS RULES ALIENS CANNOT BE OFFICERS IN 60/40
CORPORATIONS

SUMMARY: SECRETARY OF JUSTICE ABAD SANTOS HAS REITERATED AN
EARLIER LEGAL OPINION THAT ALIEN DIRECTORS OF PARTIALLY
NATIONALIZED CORPORATIONS MAY NOT HOLD ANY OTHER POSITION
IN THE CORPORATION. ALTHOUGH HIS RULING APPLIED TO THE
GOODYEAR REAL ESTATE, INC. WHICH HELD THE DIVESTED GOODYEAR
LAND, AMERICAN BUSINESSMEN ARE CONCERNED OVER THE APPLICA-
BILITY OF THE RULING. THE AMCHAM AD HOC COMMITTEE MET ON
MARCH 2 TO DISCUSS THIS AND OTHER PROBLEMS, AND DECIDED TO
ACCEPT SECRETARY OF INDUSTRY PATERNO'S OFFER OF ASSISTANCE IN
APPROACHING PRESIDENT MARCOS. SECRETARY PATERNO ALSO TOLD US
THAT BOI PLANS TO SEND A MEMORANDUM TO NEDA, STATING THAT
WHILE THE OPINION MAY BE CORRECT FROM THE LEGAL POINT
OF VIEW, BOI DID NOT AGREE WITH IT FROM THE POINT OF VIEW
OF ITS PRACTICAL EFFECT.

1. SECRETARY OF JUSTICE VICENTE ABAD SANTOS, IN OPINION
NO. 37 DATED FEBRUARY 27, 1976, REITERATED A PREVIOUS
RULING THAT "ALIENS WHO ARE ELECTED DIRECTORS OF CORPORATIONS
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OR ASSOCIATIONS ENGAGED IN PARTIALLY NATIONALIZED ACTIVITIES

MAY NOT HOLD ANY OTHER POSITION IN THE SAID ENTITY."
CORPORATIONS ENGAGED IN PARTIALLY NATIONALIZED ACTIVITIES
ARE THOSE REQUIRED BY THE CONSTITUTION OR BY LAW TO BE
CAPITALIZED WITH A 60/40 FILIPINO MAJORITY. COPY OF
OPINION BEING POUCHED EA/PHL.

2. THE OPINION RELATED TO GOODYEAR'S LAND DIVESTITURE IN
FAVOR OF A REAL ESTATE COMPANY WHICH WAS FILIPINIZED AT
60/40 WITH THE GOP-OWNED NATIONAL DEVELOPMENT COMPANY AS
THE MAJORITY PARTNER. THE PRESIDENT AND TREASURER OF THE
GOODYEAR REAL ESTATE, INC. WERE BOTH AMERICANS, AND
SECRETARY ABAD SANTOS HAD RULED LAST SEPTEMBER 24, 1975
THAT THE ANTI-DUMMY LAW PROHIBITED EMPLOYMENT OF ALIENS
IN ANY CAPACITY IN PARTIALLY NATIONALIZED ENTITIES.
GOODYEAR THEN ASKED PRESIDENTIAL ASSISTANT JUAN C. TUVERA
FOR A RECONSIDERATION OF THIS RULING WHICH ABAD SANTOS
THEN REAFFIRMED. (WE ARE UNSURE AS TO HOW THIS OPINION
MAY BE INTERPRETED OR APPLIED IN PRACTICE.)

3. BOTH AMERICAN AND FILIPINO BUSINESSMEN HAVE EXPRESSED
CONCERN OF THE OPINION WHICH, CURIOUSLY, WAS FIRST
REPORTED IN THE BULLETIN TODAY ON SATURDAY, FEBRUARY 28.
THAT WAS THE FIRST GOODYEAR AND NDC HEARD ABOUT IT.
INITIAL NERVOUSNESS IN THE BOARDROOMS WAS INCREASED AS
THE BULLETIN TODAY ON MARCH 2 QUOTED FISCAL CESARIO DEL
ROSARIO OF THE DEPARTMENT OF JUSTICE AS SAYING THAT FIRMS
HAVING ALIEN OFFICERS IN CONTRAVENTION OF THE ANTI-DUMMY
LAW WILL BE PROSECUTED BY THE DEPARTMENT.

4. HAL PALMER, PRESIDENT OF GOODYEAR PHILIPPINES,
SOUGHT OUT THE ADVICE OF BOI CHAIRMAN AND SECRETARY OF
INDUSTRY VICENTE PATERNO WHO REPORTEDLY WAS ALSO DISMAYED
AT THIS DEVELOPMENT. ACCORDING TO PALMER, PATERNO
SUGGESTED THAT AMCHAM MEET WITH PRESIDENT MARCOS TO
DISCUSS ITS PROBLEMS AND OFFERED TO OBTAIN THE
APPOINTMENT WITH THE PRESIDENT. PATERNO SAID HE WOULD
BE ABLE TO DO THIS NEXT WEEK AFTER HE RETURNS FROM
THE ASEAN ECONOMIC MINISTERS MEETING.

5. IN THIS CONTEXT AMCHAM AD HOC COMMITTEE (FOR LAUREL-
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LANGLEY TRANSITION, PRINCIPALLY LAND ISSUE) MET AFTERNOON
MARCH 2 TO DISCUSS PROBLEMS FACING AMCHAM MEMBERS. THESE
WERE (1) ABAD SANTOS OPINION ON GOODYEAR REAL ESTATE, INC.;
(2) DENIAL OF SECOND 25 YEAR LEASEBACK "AT OPTION OF LESSEE";
AND (3) PROPOSED RESTRICTION ON LOCAL BORROWING BY FOREIGN
CORPORATIONS.

6. ALTHOUGH DISCUSSION NATURALLY CENTERED AROUND ABAD SANTOS

RULING, AMCHAM OFFICERS WERE ALREADY EXERCISED OVER THEIR INABILITY TO OBTAIN LEASEBACK OF DIVESTED LAND FOR 50 YEARS. THE GOP INTERAGENCY TECHNICAL COMMITTEE HAS INSISTED ON LEASES OF AN INITIAL 25 YEARS WITH AN OPTION FOR RENEWAL FOR ANOTHER 25 YEARS "ON MUTUAL CONSENT." THIS POLICY WAS NOT UNIFORMLY APPLIED, AS CALTEX, MOBIL AND PEPSI COLA OBTAINED APPROVAL FOR LEASES FOR 25 YEARS WITH SECOND 25 YEARS AT "OPTION OF LESSEE." IN COOPERATION WITH AMCHAM, THE EMBASSY HAS MADE FORMAL REPRESENTATIONS ON THIS ISSUE WITH SENIOR GOP OFFICIALS, THE LAST INSTANCE BEING ON FEBRUARY 12 WHEN THE AMBASSADOR MET WITH SECRETARY OF FINANCE CESAR VIRATA. THE AMBASSADOR HAS ALSO INFORMALLY DISCUSSED THIS SUBJECT WITH BOTH SECRETARY PATERNO AND VIRATA ON SEVERAL OCCASIONS. VIRATA HAS ASSURED THE AMBASSADOR THAT THERE IS A PROPOSED PRESIDENTIAL DECREE CLEARIFYING THE ISSUE, BUT THE GOP TECHNICAL COMMITTEE HAS INSISTED ON THE "MUTUAL CONSENT" CLAUSE AND HAS SET INDIVIDUAL DEADLINES. SOME COMPANIES HAVE SUCCEEDED IN OBTAINING AN EXTENSION OF TIME, BUT OTHERS HAVE BEGUN TO CAPITULATE AS THEIR DEADLINE APPROACHED.

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ACTION EA-09

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XMB-02 OPIC-03 SP-02 CIEP-01 LAB-04 SIL-01 OMB-01

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R 030946Z MAR 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2672

LIMITED OFFICIAL USE SECTION 2 OF 2 MANILA 3073

7. THE AD HOC COMMITTEE THOUGHT THAT THE GOP CABINET WAS DIVIDED WITH PATERNO STANDING PRETTY MUCH ALONE AGAINST

THE NATIONALISTS. PATERNO'S SUGGESTION THAT AMCHAM SPEAK UP AND HIS OFFER TO OPEN THE DOOR TO THE PRESIDENT SEEMED TO INDICATE TO THE AMERICAN BUSINESSMEN THAT HE WAS IN A WEAKENED POSITION AND NEEDED SUPPORT FROM THE OUTSIDE. THE AMCHAM COMMITTEE CONCLUDED THAT IT WOULD TAKE PATERNO UP ON HIS OFFER.

8. WHILE AMCHAM MEMBERS WERE UNHAPPY OVER THE TURN OF EVENTS AND WISHED THAT THE EMBASSY COULD RE-DRESS THE SITUATION IN THEIR FAVOR (IF THAT WERE POSSIBLE), INDIVIDUALLY AND PRIVATELY THEY HAVE ACKNOWLEDGED THEIR AWARENESS OF RISING ECONOMIC NATIONALISM. INDEED, AT THE MEETING ITSELF, PALMER OF GOODYEAR STATED SIMPLY THAT "ABAD SANTOS MADE A CORRECT RULING." (ON THE BASIS OF LAW). HE SAID GOODYEAR WOULD NOT DO ANYTHING TO JEOPARDIZE ITS GOOD RELATIONS WITH NDC AND WOULD REPLACE THE AMERICAN OFFICERS WITH FILIPINO EMPLOYEES.

9. ONE ENCOURAGING NOTE IS THAT FILIPINO BUSINESSMEN ARE ALSO AFRAID THAT THE ABAD SANTOS OPINION MAY ADVERSELY AFFECT THE INVESTMENT CLIMATE. ONE PERSON EXPRESSING LIMITED OFFICIAL USE
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THIS CONCERN WAS EDDIE ANGARA, PROMINENT ATTORNEY FOR MANY LEADING FILIPINO AND AMERICAN CORPORATIONS, WHO SAID HE HAS BEEN INVOLVED IN CONTINUOUS MEETINGS WITH HIS CORPORATE CLIENTS. HE THOUGHT ABAD SANTOS WAS TECHNICALLY CORRECT IN INTERPRETING THE ANTI-DUMMY LAW BUT THAT HE WAS ACTING AS A DEAN OF LAW WITHOUT REGARD TO THE PRACTICAL CONSEQUENCES, PARTICULARLY ON THE INVESTMENT CLIMATE. ANGARA BELIEVED THAT THE RULING SHOULD BE OVERRULED BY THE PRESIDENT OR THROUGH AN AMENDMENT OF THE ANTI-DUMMY LAW WHICH HE POINTED OUT WAS AN ANTIQUATED COMMONWEALTH ACT AIMED AT THE CHINES.

10. SUBSEQUENTLY E/C COUNSELOR SPOKE TO INDUSTRY SECRETARY PATERNO ABOUT ABAD SANTOS OPINION AND OF CONCERN OF U.S. BUSINESS COMMUNITY WITH RESPECT TO ITS IMPLICATIONS. PATERNO SAID THAT, SPEAKING IN HIS CAPACITY AS CHAIRMAN OF THE BOI, WHILE THE BOI HAD NO QUARREL WITH THE CORRECTNESS OF THE DECISION FROM THE LEGAL POINT OF VIEW, IT DID NOT AGREE WITH IT FROM THE POINT OF VIEW OF ITS PRACTICAL EFFECT. THE BOI IS DRAFTING A COMMUNICATION TO THE NEDA EXPRESSING THIS VIEW. PATERNO SAID HE THOUGHT IT WOULD BE HELPFUL IF THE CAHMBER COULD SEND HIM ITS ANALYSIS OF HOW THE RULING WILL AFFECT ENTITIES THAT FALL WITHIN THE TERM "PARTIALLY NATIONALIZED". IN RESPONSE TO QUESTION, PATERNO AGREED THAT IT WOULD ALSO BE HELPFUL TO RECEIVE SIMILAR COMMUNICATIONS FROM OTHER ORGANIZATIONS, INCLUDING IN PARTICULAR THE JAPAN CHAMBER OF COMMERCE AND INDUSTRY. (WE HAVE CONVEYED SUSTANCE OF

FOREGOING TO AMCHAM) WITH RESPECT TO THE PROSPECT OF A
CALL BY CHAMBER REPRESENTATIVES ON PRESIDENT MARCOS,
PATERNO CONFIRMED HE HAD SUGGESTED SUCH A POSSIBILITY TO
PALMER OF GOODYEAR. PATERNO SAID HE VISUALIZED THE
FIRST STEP AS THE PREPARATION OF AN "ISSUE PAPER" BY
THE CHAMBER, ON THE BASIS OF WHICH HE WOULD PREPARE A PRECIS
FOR THE PRESIDENT, LEAVING FOR THE PRESIDENT (AS OF COURSE HE MUST)
THE OPTION OF WHETHER OR NOT TO SEE THE CHAMBER. BASED ON
PAST EXPERIENCE, IT SEEMS POSSIBLE THAT MARCOS WILL AGREE
TO DO SO.
SULLIVAN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, NATIONALIZATION, PERSONNEL, BUSINESS FIRMS, ALIENS
Control Number: n/a
Copy: SINGLE
Draft Date: 03 MAR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976MANILA03073
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760080-1277
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t197603100/aaaadkbd.tel
Line Count: 233
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 07 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <07 JUN 2004 by greeneet>; APPROVED <08 JUL 2004 by morefirh>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: ABAD SANTOS RULES ALIENS CANNOT BE OFFICERS IN 60/40 CORPORATIONS
TAGS: EINV, EGEN, RP, US, (SANTOS, VICENTE ABAD)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006